

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE
HONORABLE JOHN F. GERRY

UNITED STATES OF AMERICA,
Plaintiff,

and

NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,
Plaintiff-Intervenor,

v.

ROHM AND HAAS COMPANY, INC.,
et al.,

Defendants/Third-
Party Plaintiffs,

v.

JOHN CUCINOTTA, et al.,
Third-Party
Defendants

CIVIL ACTION NO. 85-4386

PARTIAL CONSENT DECREE
WITH DEFENDANTS
MANOR CARE INC.,
MANOR HEALTHCARE CORP.,
OWENS-ILLINOIS, INC.,
PORTFOLIO ONE, INC.,
AND
ROHM AND HAAS COMPANY



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WHEREAS, the United States of America, by authority of and at the direction of the Attorney General of the United States of America and on behalf of the Administrator of the United States Environmental Protection Agency, filed a complaint in the United

States District Court for the District of New Jersey on September 10, 1985 against Rohm and Haas Company, Marvin Jonas, Inc., CBS Records, Inc., Owens-Illinois, Inc., Cenco, Inc., Almo Inc.

(also known as Almo Tank Cleaning and Maintenance Corp.), and Manor Healthcare Corp. ("Initial Defendants"), pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), seeking recovery of its costs incurred in responding to the release and threat of release of hazardous substances at or in connection with the Lipari Landfill Superfund Site, Mantua Township, Gloucester County, New Jersey, as well as declaratory relief pursuant to 28 U.S.C. § 2201;

WHEREAS on January 29, 1986 the State of New Jersey, by the New Jersey Department of Environmental Protection and Energy, filed a Complaint in Intervention in the suit initiated by the United States on September 10, 1985, seeking recovery of costs the State has incurred and will incur in the future in response to the release and threatened release of hazardous substances from the Site;

WHEREAS, on April 25, 1986, Manor Healthcare Corp. filed a third-party Complaint against John Cucinotta and Joseph Cucinotta seeking indemnification or contribution for all sums which may be adjudged against Manor Healthcare Corp.;

WHEREAS, on July 28, 1988, a First Amended Complaint was filed, adding as defendants Triangle Publications, Inc., The Glidden Company, E.I. Dupont de Nemours & Company, Allied Paper, Inc., Betz Laboratories, Inc., Hercules Incorporated, Owens-Corning

Fiberglass Corporation, SPS Technologies, Inc., and The Gilbert Spruance Company, and seeking declaratory judgment, pursuant to Section 113(g) of CERCLA, 42 U.S.C. Section 9613(g), on liability for future response costs;

WHEREAS, on September 29, 1989, this Court approved a partial consent decree that, subject to reopener conditions, settled the claims of the United States and the State against ten de minimis defendants pursuant to Section 122(g) of CERCLA, 42 U.S.C. Section 9622(g), and on September 14, 1990, this court dismissed these ten de minimis defendants as parties in this action, subject to the reopener conditions contained in the de minimis decree;

WHEREAS, the United States and State allege that in April, 1971, the name of Almo Tank Cleaning and Maintenance Corp. was changed to Almo Anti-Pollution Services Corp.; that on October 1, 1977, Almo Anti-Pollution Services Corp. was merged into Chemlime Corp., with Chemlime Corp. as the surviving corporation; and that on November 12, 1982, the name of Chemlime Corp. was changed to Portfolio One, Inc.;

WHEREAS, the United States and State further allege that in September, 1982, Cenco, Inc. was merged into Manor Healthcare Corp. a wholly-owned subsidiary of Manor Care, Inc., by statutory merger, with Manor Healthcare Corp. as the surviving corporation;

WHEREAS, on January 2, 1991, the United States filed a Second Amended Complaint, adding as defendants Manor Care, Inc. and Portfolio One, Inc.;

WHEREAS, on December 28, 1990, the State filed a First Amended

Complaint in Intervention, adding as defendants Manor Care, Inc. and Portfolio One, Inc., and adding claims against the defendants under the New Jersey Spill Compensation and Control Act ("Spill Act"), N.J.S.A. 58:10-23.11 et seq.;

WHEREAS, in September, 1983, the Lipari Landfill was listed on the National Priorities List ("NPL") promulgated by EPA pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, App. B;

WHEREAS, the release or threatened release of hazardous substances at or from the Site has caused the United States and the State to incur response costs, and further response costs will be incurred;

WHEREAS, in 1980, the United States began expending monies in response to the release of hazardous substances at the Site, including monies for studying the Site and for evaluating the remedial alternatives at the Site;

WHEREAS, based on information collected during its site and remedial investigations, EPA signed a Record of Decision on August 3, 1982 ("ROD I") to construct: a slurry wall encircling 16 acres of contaminated soil and ground water and extending downward to form a seal with the underlying clay (the "containment system") to eliminate and/or minimize further releases from that contaminated area to the surrounding environment; a synthetic membrane cap covering the containment system; a passive gas venting system underlying the cap; and a surface water drainage system overlying the cap to prevent and/or minimize ponding of rainwater or melting

snow upon the cap;

WHEREAS, in September of 1985, EPA signed a Record of Decision ("ROD II") to undertake a second phase of remedial action pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), to batch flush the containment system required by ROD I, and to monitor the Kirkwood Aquifer. In February, 1986, EPA also issued a Clarification Letter, signed by the Regional Administrator, and sent to all interested parties, regarding implementation of accelerated batch flushing as a component of the ROD II remedy;

WHEREAS, on July 11, 1988, EPA signed a Record of Decision ("ROD III") to undertake a remedial action pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), to remediate contamination in Chestnut Branch Marsh, Chestnut Branch, Rabbit Run, and Alcyon Lake, to construct and operate a French drain and to construct an associated cap, and to pump and treat the Kirkwood Aquifer;

WHEREAS, on June 15, 1992, EPA, acting pursuant to Section 300.825 (a) (2) of the NCP, issued an Explanation of Significant Differences with respect to ROD II ("ESD"). EPA will place the ESD and the appropriate documentation used as a basis for issuing the ESD, as well as any comments made by Settling Defendants which are required to be included in the administrative record by the NCP, in the administrative record supporting ROD II.

WHEREAS, without prejudice to a subsequent determination by EPA that human health or the environment is not protected, it is EPA's intention, as of the date of the entry of this Consent Decree, to implement the Remedial Action as described herein. In

implementing the Remedial Action, EPA has incurred and will incur Included Response Costs.

WHEREAS, Rohm and Haas has submitted comments contained in the administrative records relating to the Remedial Action that allege that some or all of the selected Remedial Action: (a) will result in the further release or threatened release of hazardous substances into the environment; (b) will not achieve the goals, standards or objectives set by the United States; (c) will be required to be implemented for a period of time longer than originally estimated to achieve such goals, standards or objectives; and (d) will exceed the costs estimated by the United States; and Rohm and Haas has submitted, in materials also contained in the administrative records relating to the Remedial Action, certain information concerning conditions at the Site in support of such contentions;

WHEREAS, Owens-Illinois and the Manor Defendants join in the concerns reflected in the comments by Rohm and Haas with respect to the Remedial Action;

WHEREAS, the United States and the State disagree with said comments and concerns, and the parties agree that nothing in this Consent Decree shall constitute an admission or determination of the truth or accuracy of such comments and concerns and the analyses and data submitted by Rohm and Haas in support thereof;

WHEREAS, the United States and State allege that Rohm and Haas Company, Owens-Illinois Inc., and Portfolio One, Inc. are liable as generators and/or transporters under Section 107(a)(3) and (4) of

CERCLA, 42 U.S.C. § 9607(a)(3) and (4), and are liable as dischargers and/or responsible parties under the Spill Act, N.J.S.A. 58:10-23.11g(c), and that Manor Care, Inc. and Manor Healthcare Corp. are derivatively liable for the liability of Portfolio One, Inc.;

WHEREAS, on December 28, 1990, a Stipulation and Consent for the Entry of Partial Summary Judgment on Joint and Several Liability against Rohm and Haas Company for Costs and Declaratory Judgment for Future Response Costs and on May 13, 1991, a Stipulation between the New Jersey Department of Environmental Protection and Rohm and Haas Company for Withdrawal of Motion for Partial Summary Judgment on Joint and Several Liability (together, the "Stipulations"), were filed herein;

WHEREAS, the parties to this Decree desire to protect public health and welfare and the environment at the Site, and to resolve Plaintiffs' claims for Included Response Actions and for Included Response Costs and Included State Response Costs, as defined herein;

WHEREAS, EPA has determined that extraordinary circumstances within the meaning of Section 122(f)(6)(B) of CERCLA, 42 U.S.C. § 9622(f)(6)(B), exist which warrant a limitation as to the United States' reserved rights to sue Settling Defendants for Included Response Actions or Included Response Costs, as provided herein at Paragraph 17. In making this determination, EPA has assessed the appropriateness of the covenant not to sue and the limitation thereon as provided by this Consent Decree, in light of the factors

enumerated in Section 122(f)(4) and (6)(B) of CERCLA, 42 U.S.C. § 9622(f)(4) and (6)(B);

WHEREAS, except to the extent provided in the Stipulations, Rohm and Haas Company, Owens-Illinois, Inc., and the Manor Defendants by entering into this Consent Decree, do not admit any liability arising out of the transactions or occurrences alleged in the complaints, nor shall this Decree be an admission or an acknowledgement of the appropriate manner in which response costs ought to be allocated or apportioned, under 42 U.S.C. § 9613 (f)(1) or otherwise, if at all, among the Settling Defendants;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW THEREFORE, with the consent of the parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. Sections 1331 and 1345, and 42 U.S.C. Sections 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. The complaints of the United States and the State state claims upon which relief may be granted. Solely for the purposes of this Consent Decree and the underlying complaints, the Settling Defendants waive all objections

and defenses that they may have to jurisdiction of the Court or to venue in this District and shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the State, and upon each of the Settling Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status, obligations or responsibilities of the Settling Defendants under this Consent Decree. For a period of 10 years following the Certification of Completion, each Settling Defendant agrees to provide its successors and assigns written notice of this Consent Decree and to provide to EPA and the State, in accordance with Section XIII of this Decree, notice of such successorship or assignment, within 30 days of such change.

III. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the Appendices attached hereto and incorporated hereunder, the following definition shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and the attached Appendices.

"Day" shall mean a calendar day.

"DOJ" shall mean the United States Department of Justice and any successor departments of the United States.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Excluded Response Actions" shall mean all response actions not constituting Included Response Actions, as that term is defined in this Consent Decree. Excluded Response Actions specifically include but are not limited to, response actions addressing soil contamination in Chestnut Branch Marsh and sediment and surface water contamination in Chestnut Branch, Rabbit Run, and Alcyon Lake.

"Excluded Response Costs" shall mean any response costs incurred or paid or to be incurred or paid by the United States not constituting Included Response Costs, as that term is defined in this Consent Decree.

"Excluded State Response Costs" shall mean any response costs incurred or paid or to be incurred or paid by the State not constituting Included State Response Costs, as that term is defined in this Consent Decree.

"Included Response Actions" shall mean all response actions

relating to the area of contamination considered within or addressed by: (1) ROD I; (2) ROD II; and (3) the following components of ROD III: (a) the construction and operation of the seepage control system, including the wellpoint interception system as well as the French drain and associated cap downgradient of the containment system; and (b) the remediation of the Kirkwood Aquifer in the area impacted by the landfill.

"Included Response Costs" shall mean the sum of: (a) all Department of Justice costs relating to the Site incurred or paid through September, 1990; (b) all EPA personnel costs relating to the Site incurred or paid through November, 1989; (c) all other costs incurred or paid or to be incurred or paid by the United States in performing Included Response Actions, as defined herein; and (d) interest on all costs relating to items (a), (b) and (c) above. The Included Response Costs shall include the amounts incurred or paid or to be incurred or paid pursuant to the contracts and agreements listed on Appendix A to this Consent Decree, except to the extent identified in Appendix A.

"Included State Response Costs" shall mean the sum of: (a) all costs incurred or paid or to be incurred or paid by the State in performing or paying for Included Response Actions; (b) all administrative costs relating to the Site through September, 1990; (c) all claims for penalties and treble damages against Settling Defendants arising out of the Directive and Notice to Insurers in the Matter of the Lipari Landfill, dated September 15, 1989; and (d) interest on all costs relating to items (a), (b) and (c) above.

"Manor Defendants" shall mean Manor Care, Inc., Manor Healthcare Corp., and Portfolio One, Inc., and their successors and assigns, as well as any of their corporate affiliates having corporate successor liability or corporate derivative liability for Almo, Inc.'s alleged activities at the Lipari Landfill Superfund Site.

"NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Owens-Illinois" shall mean Owens-Illinois, Inc. and its successors and assigns.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States, the State of New Jersey and each and every Settling Defendant.

"Plaintiffs" shall mean the United States and the State of New Jersey.

"ROD I" shall mean the EPA Record of Decision relating to the Lipari Landfill Superfund Site signed on August 3, 1982 by the Regional Administrator, EPA Region II, and all attachments thereto.

"ROD II" shall mean the EPA Record of Decision relating to the Lipari Landfill Superfund Site signed on September 30, 1985 by the Regional Administrator, EPA Region II, all attachments thereto, the February 6, 1986 Clarification letter signed by the Regional Administrator, and the ESD issued on June 15, 1992.

"ROD III" shall mean the EPA Record of Decision relating to the Lipari Landfill Superfund Site signed on July 11, 1988 by the Regional Administrator, EPA Region II, and all attachments thereto.

"Remedial Action" shall mean those activities, including operation and maintenance, to be undertaken by the United States to implement the response actions described in ROD I, ROD II, and only that portion of ROD III relating to the construction and operation of the seepage control system, including the wellpoint interception system as well as the French drain and associated cap downgradient of the containment system, and to remediation of the Kirkwood Aquifer in the area contaminated by the landfill.

"Rohm and Haas" shall mean Rohm and Haas Company, and its successors and assigns.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendants" shall mean Rohm and Haas Company, Owens-Illinois, Inc., and the Manor Defendants.

"Site" shall mean the Lipari Landfill Superfund site, located in the Township of Mantua, Gloucester County, New Jersey, and the areal extent of the contamination that has been released from the Lipari Landfill.

"Spill Act" shall mean the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq.

"State" shall mean the State of New Jersey, including the Department of Environmental Protection and Energy and any successor departments or agencies.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous substance" under N.J.S.A. 58:10-23.11b(k).

IV. REIMBURSEMENT OF RESPONSE COSTS

4. Payment and Interest -- Rohm and Haas

Rohm and Haas shall pay to the United States and State a total principal amount of \$42,700,000, plus interest, which, when paid according to the terms and the schedule set forth below and, except as otherwise provided by this Consent Decree, shall be in full satisfaction of Included Response Costs and Included State Response Costs as defined herein.

a. No later than September 1, 1992, Rohm and Haas shall deposit Payment 1 as provided by Appendix B to this Consent Decree, in the amount of \$6,000,000, in escrow with the Clerk of the Court pursuant to the Consent Order Granting Motion to Deposit Sums of Money, entered herein on August 21, 1992 (the "Escrow Order"). All funds so deposited with the Clerk of the Court shall be managed, invested and disbursed in accordance with the Escrow Order. Once this Consent Decree has been entered by the Court, Rohm and Haas shall make all further payments required by Appendix B at the times and in the amounts provided thereon and in accordance with the terms of this Consent Decree.

b. Subject to the provisions of Paragraph 4(d), Rohm and Haas, at any time following Payment 2, shall have the privilege of pre-paying, in whole or in part, the outstanding and unpaid balance of the principal sum and any interest accrued thereon.

c. Except as provided by the Escrow Order, interest shall accrue on all unpaid portions of the net principal amount due from Rohm and Haas to the United States and the State beginning on the 30th day after entry of this Consent Decree and at the rate that has been specified for interest on investments of the Hazardous Substances Superfund pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a) (the "Superfund Interest Rate") for that United States fiscal year. Interest shall accrue at the applicable Superfund Interest Rate until a new Superfund Interest Rate becomes effective for the next United States fiscal year at which time interest shall be adjusted to the new Superfund Interest Rate. With respect to Payments 4 and 7, Rohm and Haas shall pay interest on the unpaid principal balance remaining after the preceding principal payment, computed by adding (i) the applicable Superfund Interest Rate, as adjusted, and (ii) one-half of one percent (the "Half Percent Premium Interest Payments").

d. Rohm and Haas shall pay the United States and the State the Half Percent Premium Interest Payments (i) at the time Payments 4 and 7 become due pursuant to Appendix B, or (ii) if Rohm and Haas elects to pre-pay the outstanding and unpaid balance of the principal sum at the time such pre-payment is made.

e. Except for Payment 1 made by Rohm and Haas pursuant to the Escrow Order, all installment payments shall be made by Rohm and Haas by way of Electronic Funds Transfer ("EFT") to the United States Department of Justice Lock Box Bank, referencing the CERCLA Number NJD 980505416 and the U.S.A.O. file number 8503631. Payment by EFT shall be made in accordance with instructions provided by the United States to Rohm and Haas upon execution of the Consent Decree. Payments by EFT must be received at the U.S.D.O.J. Lock Box Bank no later than 11:00 A.M. (Eastern Time) on the date such payments are due, or such payments will be deemed to be late. Proof of installment payments made by Rohm and Haas by EFT shall be sent to the United States and the State as specified in Section XIII (Notices and Submissions).

f. In the event that Rohm and Haas fails to make any installment payment required by this Consent Decree, together with any stipulated penalties for late payments required by Paragraph 7 of this Decree, by 11:00 A.M. (Eastern Time) on the third day following the date the payment was due (the "Late Payment Date"), all remaining payments and the accrued interest shall become immediately due and owing. Thereafter, interest shall accrue on the entire unpaid balance at the prime rate plus two percentage points, and such interest shall be compounded each United States fiscal year. The interest on such unpaid balance shall begin to accrue on the date after the Late Payment Date. With respect to any payment made after the Late Payment Date, the United States, in its unreviewable discretion, may elect to void

the covenants not to sue in accordance with Paragraph 12 of this Decree in lieu of accelerating payment of all sums due and owing.

5. Payment and Interest -- Owens Illinois

Owens-Illinois, Inc. shall pay to the United States and State a total of \$6,969,000.00, which, when paid according to the terms set forth below and, except as otherwise provided by this Consent Decree, shall be in full satisfaction of Included Response Costs and Included State Response Costs as defined herein.

a. Within 30 days of the effective date of this Consent Decree, Owens-Illinois, Inc. shall pay to the United States \$6,969,000.00, by way of Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the CERCLA Number NJD980505416 and the U.S.A.O. file number 8503631. Payment shall be made in accordance with instructions provided by the United States to the Settling Defendants upon execution of the Consent Decree. Payment by EFT must be received at the U.S.D.O.J. lockbox bank no later than 11:00 A.M. (Eastern Time) on the date such payment is due, or such payment will be deemed late. Proof of payment shall be sent to the United States and State as specified in Section XIII (Notices and Submissions).

b. In the event Owens-Illinois fails to make the payment on the date required by this Consent Decree, Owens-Illinois shall be liable for interest on the unpaid balance at the prime rate plus two percentage points and such interest shall be compounded each federal fiscal year until the unpaid balance,

including the accrued interest, is paid. The interest on such unpaid balance shall begin to accrue on the day after such payment was due.

6. Payment and Interest -- Manor Defendants

The Manor Defendants shall pay to the United States and State a total of \$2,633,375.00, which, when paid according to the terms set forth below and, except as otherwise provided by this Consent Decree, shall be in full satisfaction of Included Response Costs and Included State Response Costs as defined herein.

a. Within 30 days of the effective date of this Consent Decree, the Manor Defendants shall pay to the United States \$2,613,375.00, by way of Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the CERCLA Number NJD980505416 and the U.S.A.O. file number 8503631. Payment shall be made in accordance with instructions provided by the United States to the Settling Defendants upon execution of the Consent Decree. Payment by EFT must be received at the U.S.D.O.J. lockbox bank no later than 11:00 A.M. (Eastern Time) on the date such payment is due, or such payment will be deemed late. Proof of payment shall be sent to the United States and State as specified in Section XIII (Notices and Submissions).

b. Within 30 days of the effective date of this Consent Decree, the Manor defendants shall pay to the State of New Jersey, the sum of \$20,000.00. Payment shall be made by certified check payable to "Treasurer, State of New Jersey", and sent to:

Deputy Attorney General Frank X. Cardiello, Division of Law,
Richard J. Hughes Justice Complex, CN093, Trenton, NJ 08625.

c. The obligations of the Manor Defendants to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more of the Manor Defendants to make the payments required by this Consent Decree, the remaining Manor Defendants shall make those payments.

d. Should the Manor Defendants fail to make the payment on the date required by this Consent decree, the Manor Defendants shall be liable for the interest on the unpaid balance at the prime rate plus two percentage points and such interest shall be compounded each federal fiscal year until the unpaid balance, including the accrued interest, is paid. The interest on such unpaid balance shall begin to accrue on the day after such payment was due.

V. STIPULATED PENALTIES

7. a. Should any Settling Defendant fail to pay any amounts due under Section IV by the required date, that Settling Defendant shall pay, in addition to interest, a stipulated penalty in the amount of \$15,000 per day for each day or portion thereof that such payment is late. Settling Defendants shall also be liable for a stipulated penalty in the amount of \$1,000 per day, or portion of any day, for failure to comply with any requirements of this Consent Decree other than those related to the payment of amounts due under Section IV.

b. Each Settling Defendant shall be liable for all accrued stipulated penalties chargeable to that Settling Defendant regardless of the date upon which a demand is made. All penalties owed to the United States or the State under this Paragraph shall be due and payable within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties. All payments due from Owens-Illinois and the Manor Defendants under this Paragraph shall be made in the same form and manner as specified in Paragraphs 5 and 6, respectively. All payments due from Rohm and Haas under this Paragraph shall be made in the same form and manner as specified in Section IV and Appendix B, respectively. Copies of checks paid pursuant to this Paragraph, and accompanying transmittal letters, shall be sent to the United States and the State as provided in Section XIII (Notices and Submissions).

8. No payments of stipulated penalties or interest accruing on payments after the date on which such payments are required under Paragraph 7 of this Consent Decree shall be tax deductible for Federal or State Tax purposes.

9. If the United States or the State must bring an action to collect any payment required under this Consent Decree, the Settling Defendant against whom such action is brought shall be liable to reimburse the appropriate plaintiff for all costs of such action, including but not limited to, attorney's fees.

10. Payments of stipulated penalties made under this Section shall be in addition to any other remedies or sanctions

available to Plaintiffs by virtue of any Settling Defendant's failure to comply with the terms of this Consent Decree.

VI. FINANCIAL ASSURANCE

11. No later than 30 days after lodging of this Consent Decree, Rohm and Haas shall establish and maintain financial security in the amount of no less than the balance of the principal outstanding in one of the following forms:

- a. A surety bond guaranteeing Rohm and Haas' payment obligations under this Consent Decree;
- b. One or more letters of irrevocable credit equalling the remaining balance;
- c. A trust fund; or
- d. A demonstration acceptable to EPA that Rohm and Haas satisfies the requirements of 40 C.F.R. § 264.143(f).

VII. COVENANTS NOT TO SUE BY PLAINTIFFS

12. Covenants Not To Sue

In consideration of the payments that will be made by each of the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 13-15 of this Section, the United States and the State covenant not to sue or to take administrative action against such Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA or the Spill Act with respect to the performance of Included Response Actions or for recovery of Included Response Costs and Included State Response Costs as those terms are defined under this Consent Decree. Except with respect to future liability, these covenants not to sue shall take effect

with respect to each Settling Defendant upon the entry of this Decree by the Court and shall remain in effect subject to the other provisions of this Consent Decree; provided, however, failure on the part of any Settling Defendant to make any payment required by this Decree, together with any stipulated penalties for late payment required by Paragraph 7 of this Decree, by 11:00 a.m. (Eastern Time) on the third day following the date the payment was due shall void the covenants not to sue as to that Settling Defendant. With respect to any late payment by Settling Defendant Rohm and Haas, the United States, in its unreviewable discretion, may elect to accelerate the payment of all sums due and owing as provided for in Paragraph 4 f. of this Decree, in lieu of voiding the covenants not to sue. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion by EPA pursuant to Paragraph 27 of Section X of this Consent Decree. These covenants extend only to the Settling Defendants and do not extend to any other person.

13. General Reservations

The covenant not to sue set forth in Paragraph 12 above shall not apply and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters not addressed by this Consent Decree, including but not limited to, the following:

(1) liability to perform any response actions constituting Excluded Response Actions, as that term is defined in this Consent Decree.

(2) liability for any response costs incurred or paid or to be incurred or paid by the United States or the State constituting Excluded Response Costs or Excluded State Response Costs, as those terms are defined in this Consent Decree;

(3) claims based upon failure of Settling Defendants to meet the requirements of this Consent Decree;

(4) liability for damages to natural resources, as defined in Section 101(6) of CERCLA, 42 U.S.C. § 9601(6) and N.J.S.A. 58:10-23.11b(m).

(5) claims based upon criminal liability;

(6) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site; or

(7) liability for violations of federal or state law other than the alleged violations resolved in this Decree.

14. Pre-Certification Reopeners of Liability

Notwithstanding the covenants not to sue in Paragraph 12 of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel any Settling Defendant (1) to perform further response actions relating to the contamination addressed by the Included Response Actions or (2) to reimburse the United States and the State for additional costs of response relating to the contamination addressed by the Included Response

Actions if, prior to Certification of Completion:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action is not protective of human health or the environment.

15. Post-Certification Reopeners of Liability

Notwithstanding the covenants not to sue in Paragraph 12 of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel any Settling Defendant (1) to perform further response actions relating to the contamination addressed by the Included Response Actions or (2) to reimburse the United States and the State for additional costs of response relating to the contamination addressed by the Included Response Actions if, subsequent to Certification of Completion:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicate that the Remedial Action is not protective of human health or the environment.

16. a. For purposes of Paragraph 14 of this Consent Decree, the information and the conditions previously known to EPA shall include only that information and those conditions as of the entry of the Consent Decree set forth: (1) in RODs I, II, and the following components of ROD III - (i) the construction and operation of the seepage control system, including the wellpoint interception system as well as the French drain and associated cap downgradient of the containment system and (ii) the remediation of the Kirkwood Aquifer in the area contaminated by the landfill; and (2) in the Administrative Record supporting such Records of Decision.

b. For purposes of Paragraph 15 of this Consent Decree, the information and the conditions previously known to EPA shall include only that information and those conditions as of the Certification of Completion set forth: (1) in RODs I and II and the following components of ROD III - (i) the construction and operation of the seepage control system, including the wellpoint interception system as well as the French drain and associated cap downgradient of the containment system and (ii) the remediation of the Kirkwood Aquifer in the area contaminated by the landfill; and (2) in the Administrative Record supporting such Records of Decision.

17. The reservations of rights in Paragraphs 14 and 15 of this Consent Decree shall not apply to any proceedings or administrative actions to reimburse the United States or the State for Included Response Costs or Included State Response Costs

incurred in cumulative excess of \$88,000,000. This Paragraph shall not affect the right of the United States or the State, subject to Paragraphs 14 and 15, to institute proceedings or administrative actions to reimburse the United States or the State for Included Response Costs or Included State Response Costs incurred up to a cumulative total (including the Included Response Costs and Included State Response Costs being reimbursed under this Consent Decree) of \$88,000,000.

18. Except as expressly provided for in the covenant not to sue set forth in Paragraph 12 above, the United States and the State reserve all claims, demands, and causes of action, past or future, judicial or administrative, in law or equity, including but not limited to cost recovery and injunctive relief and natural resource damages, against any person or entity, including any Settling Defendant.

19. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

VIII. COVENANTS BY SETTLING DEFENDANTS

20. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the matters addressed by this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26

U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, or 113, or any other provision of law related to the Consent Decree, any direct or indirect claim for reimbursement from the New Jersey Spill Compensation Fund, N.J.S.A. 58:10-23.11g, or the New Jersey Sanitary Landfill Facility Contingency Fund, N.J.S.A. 13:1E-100 related to the Consent Decree, any claim under CERCLA sections 107 or 113 related to the Consent Decree against the United States or the State, including any department, agency, or instrumentality of the United States, or any claims arising out of response activities addressed by the Consent Decree. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

21. Settling Defendants acknowledge that the full amount received by Plaintiffs in connection with the de minimis consent decree entered on September 29, 1989, has been applied to the Included Response Costs and Included State Response Costs, as those terms are defined under this Consent Decree, and covenant not to assert any defense based upon the application of the proceeds of the de minimis consent decree in any action relating to Excluded Response Actions, Excluded Response Costs or Excluded State Response Costs, as those terms are defined under this Consent Decree.

IX. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

22. Nothing in this Consent Decree shall be construed to

create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

23. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled to such protection from claims for contribution as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

24. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and the State in writing no later than 30 days prior to the initiation of such suit or claim. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the State within 30 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the State within 15 days of service or receipt of any Motion for Summary Judgment and within 15 days of receipt of any order from a court setting a case for trial or of any memorandum, opinion or decision issued by a court following a hearing or trial on any matter related to this Consent Decree or to

the Site.

25. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, including a proceeding for the performance of Excluded Response Actions or to recover Excluded Response Costs or Excluded State Response Costs, as those terms are defined in this Consent Decree, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, entire controversy doctrine, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in this civil action; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in section VII (Covenants Not to Sue by Plaintiffs).

26. The Settling Defendants reserve the right, and this Decree is without prejudice to their right, to defend against claims by the United States for Excluded Response Costs and by the State for Excluded State Response Costs on the ground that the costs claimed are in fact Included Response Costs or Included State Response Costs settled by this Decree.

X. CERTIFICATION OF COMPLETION

27. After the completion of the ROD II components of the Remedial Action and after reasonable opportunity for review and comment by the State, EPA will issue a Remedial Action Report for ROD II to document the completion of the ROD I and ROD II components of the Remedial Action. After completion of the ROD III components of the Remedial Action and after a reasonable opportunity for review and comment by the State, EPA will issue a Remedial Action Report for ROD III to document the completion of the ROD III components of the Remedial Action. The issuance of both of these reports shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section VII (Covenants Not to Sue by Plaintiffs). Certification of Completion shall not affect Settling Defendants' obligations under this Consent Decree that continue beyond the Certification of Completion, including, but not limited to, access and record retention, nor shall it have any effect beyond this Consent Decree.

XI. ACCESS TO INFORMATION

28. Subject to Paragraph 29, Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to the Included Response Actions.

29. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or

information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604 (e)(7), and 40 C.F.R. Section 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law or New Jersey law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

30. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions involving the Included Response Actions.

XII. RETENTION OF RECORDS

31. Until 10 years after the effective date of this Consent Decree, each Settling Defendant shall preserve and retain at least one copy of all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the Included Response Actions or the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

32. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to the EPA or the State. Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal or New Jersey law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the

author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

33. Each Settling Defendant hereby certifies, individually, that it has not knowingly altered, mutilated, discarded, destroyed or otherwise disposed of all copies of any records, documents, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that, to the best of its knowledge after thorough investigation, it has fully complied in an original or supplemental response, including any supplemental response provided after the effective date of this Consent Decree, with any and all EPA requests for information related to the Site pursuant to Sections 104(e) and 122(e) of CERCLA and Section 3007 of RCRA. In providing this Certification, each Settling Defendant hereby acknowledges and agrees that it has a continuing duty to supplement any such original or supplemental response with information later acquired. Solely for purposes of this Consent Decree, each Settling Defendant will supplement any original or supplemental response for a period of 10 years following the entry of this Consent Decree, or until Certification of Completion,

whichever comes later. If the information provided in an original or supplemental response by any Settling Defendant to the United States or the State as described above is not materially true or complete, if any Settling Defendant fails to supplement such an original or supplemental response, or if the certification provided by any Settling Defendant pursuant to this Paragraph is not true in any material respect, the Covenants Not To Sue in Section 12 of this Consent Decree shall not be effective with respect to such Settling Defendant.

XIII. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Decree, written notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Re: DOJ Number 90-11-3-86.

As to EPA:

U.S. Environmental Protection Agency
Emergency and Remedial Response Division
26 Federal Plaza
New York, NY 10278
Attn: Remedial Project Manager-Lipari
Landfill Superfund Site

U.S. Environmental Protection Agency
Office of Regional Counsel
26 Federal Plaza
New York, NY 10278
Attn: Assistant Regional Counsel-Lipari Landfill Superfund Site

As to the State:

Section Chief
Hazardous Site Litigation Section
Division of Law
Department of Law and Public Safety
Richard J. Hughes Justice Complex
CN093
Trenton, NJ 08625

Assistant Director
Division of Responsible Party Site Remediation
New Jersey Department of Environmental Protection and Energy
401 East State Street
Trenton, NJ 08625

As to Settling Defendants:

1. Manor Defendants:

James H. Rempe
Office of General Counsel
Manor Care, Inc.
10750 Columbia Pike
Silver Spring, MD 20901

Wilson, Elser, Moskowitz, Edelman & Dicker
1 Gateway Plaza
Newark, NJ 07102

2. Owens-Illinois:

Robert Towles
One SeaGate
Toledo, OH 43666

3. Rohm and Haas:

Ellen S. Friedell
Senior Counsel
Rohm and Haas Company
Independence Mall West
Philadelphia, PA 19105

XIV. EFFECTIVE DATE

35. This Decree shall be effective upon the date of its entry by the Court.

XV. RETENTION OF JURISDICTION

36. The Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further orders, direction and relief as may be necessary or appropriate for the construction or interpretation of this Consent Decree, or to effectuate or enforce compliance with its terms.

XVI. APPENDICES

37. The following appendices are attached to and incorporated into this Consent Decree:

Appendix A

Lipari Landfill Superfund Site Contracts and Interagency Agreements.

Appendix B

Rohm and Haas Payment Schedule.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

38. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

39. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party only as to that particular party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

40. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, and the Attorney General for the State of New Jersey, or his designee, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

41. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any

provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of this Consent Decree.

42. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree.

SO ORDERED THIS _____ DAY OF _____, 19__

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and State of New Jersey v. Rohm and Haas Company, Inc., et al., CA 85-4386, relating to the Lipari Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

Vicki O'Meara
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

Michael Chertoff
United States Attorney
District of New Jersey
970 Broad Street
Newark, NJ 07102

Date: _____

Dorothy Donnelly
Assistant United States Attorney
District of New Jersey
402 East State Street
Trenton, NJ 08608

Date: _____

Joseph Hurley
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
10th & Pennsylvania Avenue, N.W.
Washington, DC 20530

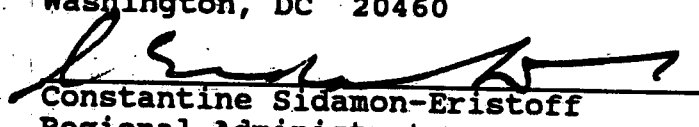
Date: _____

Herbert Tate, Jr.
 Assistant Administrator for
 Enforcement
 U.S. Environmental Protection Agency
 401 M Street, SW
 Washington, DC 20460

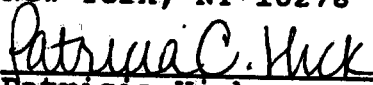
Date: _____

Kenneth W. Patterson
 Attorney
 Superfund Division
 Office of Enforcement
 U.S. Environmental Protection
 Agency
 401 M Street, SW
 Washington, DC 20460

Date: October 26 '92


 Constantine Sidamon-Eristoff
 Regional Administrator
 Region II
 U.S. Environmental Protection
 Agency
 26 Federal Plaza
 New York, NY 10278

Date: October 16, 1992


 Patricia Hick
 Assistant Regional Counsel
 Region II
 U.S. Environmental Protection
 Agency
 26 Federal Plaza
 New York, NY 10278

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of New Jersey v. Rohm and Haas Company, Inc., et al., CA 85-4386, relating to the Lipari Landfill Superfund Site.

FOR THE STATE OF NEW JERSEY

Date: _____

Deputy Attorney General
Division of Law
Department of Law and Public Safety
Richard J. Hughes Justice Complex
CN093
Trenton, NJ 08625

Date: _____

Ronald T. Corcory
Assistant Director
Division of Responsible Party Site
Remediation
New Jersey Department of
Environmental Protection and Energy
401 East State Street
Trenton, NJ 08625

42

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of New Jersey v. Rohm and Haas Company, Inc., et al., CA 85-4386, relating to the Lipari Landfill Superfund Site.

FOR DEFENDANT MANOR CARE, INC.

Date: 9/1/92


James H. Rempe
Senior Vice-President

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name:	James H. Rempe
Title:	Senior Vice-President
Address:	10750 Columbia Pike Silver Spring, MD 20901

43

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of New Jersey v. Rohm and Haas Company, Inc., et al., CA 85-4386, relating to the Lipari Landfill Superfund Site.

FOR DEFENDANT MANOR HEALTHCARE
CORP.

Date:

9/1/92


James Rempe
Senior Vice-President

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

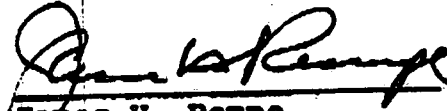
Name: James H. Rempe
Title: Senior Vice-President
Address: 10750 Columbia Pike
Silver Spring, MD 20901

44

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of New Jersey v. Rohm and Haas Company, Inc., et al., CA 85-4386, relating to the Lipari Landfill Superfund Site.

FOR DEFENDANT PORTFOLIO ONE,
INC.

Date: 9/1/92


James H. Rempe
President

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

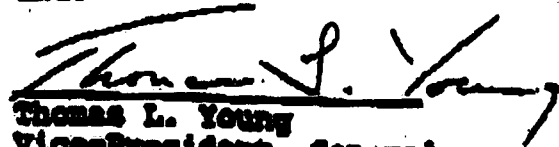
Name: James H. Rempe
Title: President
Address: 10750 Columbia Pike
Silver Spring, MD 20901

43

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of New Jersey v. Rohm and Haas Company, Inc., et al., CA 88-4386, relating to the Lipari Landfill Superfund Site.

FOR DEFENDANT OWENS-ILLINOIS, INC.

Date: September 2, 1992


Thomas L. Young
Vice-President, General
Counsel, General Manager of
Operations Administration and
Secretary
One Seagate
Toledo, OH 43666

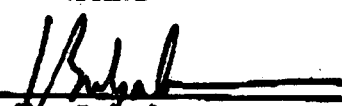
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Robert Towles
Title: Manager of Environmental Affairs
Address: One Seagate
Toledo, OH 43666

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and State of New Jersey v. Rohm and Haas Company, Inc., et al., CA 85-4386, relating to the Lipari Landfill Superfund Site.

FOR DEFENDANT ROHM AND HAAS
COMPANY

Date: September 1, 1992


John T. Subak
Group Vice-President and
General Counsel
Independence Mall West
Philadelphia, PA 19105

Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: Ellen S. Friedell
Title: Senior Counsel
Address: Independence Mall West
Philadelphia, PA 19105

APPENDIX A

**LIPARI LANDFILL SUPERFUND SITE CONTRACTS
AND
INTERAGENCY AGREEMENTS**

LIPARI LANDFILL SUPERFUND SITE CONTRACTS AND INTER-AGENCY AGREEMENTS

1. Lipari Landfill Contractors

CONTRACTOR NAME	CONTRACT NO.	DESCRIPTION OF ACTIVITY
Acurex Corp.	68-01-7142 *	Performed sampling analysis.
Alliance Tech	68-W9-0003	Provided technical and analytical support for litigation during settlement negotiations on RODs I and II.
Analytica/CSMRI	68-01-7306	Performed sampling analysis.
Aquatec	68-01-7150	Performed sampling analysis.
	68-01-7434	Performed sampling analysis.
Associated Lab	68-01-7308	Performed sampling analysis.
California Analytical	68-01-7070	Performed sampling analysis.
	68-01-7147	Performed sampling analysis.
Camp, Dres. McKee	68-W9-0002	Reviewed analytical/evidentiary material in support of litigation.
	68-W9-0024	Provided technical assistance to EPA as needed during the ROD II remedial action.
	68-03-1612	Performed engineering design for the ROD I remedy.
	68-01-6939 *	Provided technical assistance to EPA for the ROD II remedial design and coordinated it with the ROD III RI/FS, which was also performed under this contract.
	68-01-7331 *	Assisted EPA in the evaluation of technical comments on the ROD III RI/FS.
Centec	68-01-7057	Performed sampling analysis.
Chemtech	68-01-6829 *	Performed sampling analysis.
	68-01-6875 *	Performed sampling analysis.

*This contract or agreement covers included Response Costs and Excluded Response Costs. Nothing in this Appendix affects whatever rights Settling Defendants have under Paragraph 26 of this Consent Decree.

CONTRACTOR NAME	CONTRACT NO.	DESCRIPTION OF ACTIVITY
Chemtech - cont'd	68-01-7307 *	Performed sampling analysis.
Compuchem	68-01-6076	Performed sampling analysis.
	68-01-6432	Performed sampling analysis.
	68-01-7017 *	Performed sampling analysis.
	68-01-7263	Performed sampling analysis.
	68-01-7397 *	Performed sampling analysis.
EAL (Thermo Analytical)	68-01-7079	Performed sampling analysis.
Ecology & Environment	68-01-5158	Provided technical support in regard to fence installation and ROD I remedial Construction, including sampling and other information gathering related to these activities.
	68-01-6056	Performed air and water sampling in and adjacent to the Lipari Site.
	68-01-7158 *	Performed sampling analysis.
	68W0511NLX	Reviewed costs of contracts with EPA relating to the Site.
EMSI	68-01-6783 *	Performed sampling analysis.
EMSL	68-08-2636	Aerial remote sensing over the Lipari Landfill Site.
Enseco	68-01-7027 *	Performed sampling analysis.
	68-01-7476	Performed sampling analysis.
Env. Sci. & Eng.	68-01-7316	Performed sampling analysis.

CONTRACTOR NAME	CONTRACT NO.	DESCRIPTION OF ACTIVITY
F.W. Envires- ponse	68-03-3255 *	Compiled leachate data and conducted air monitoring at or near the Lipari Site.
GCA	68-01-6769	Provided EPA with technical assistance for litigation support.
GCA Tech.	68-01-7080 *	Performed sampling analysis.
Gulf SouthWest	68-01-6959 *	Performed sampling analysis.
Hittman	68-01-7280 *	Performed sampling analysis.
	68-01-7311 *	Performed sampling analysis.
JRB	68-03-3113	Provided EPA with assistance in developing a long-term monitoring plan and conducting monitoring after completion of the ROD I construction.
JTC Env.	68-01-6877 *	Performed sampling analysis.
	68-01-7063 *	Performed sampling analysis.
Lockheed	68-02-3137	Aerial remote sensing over the Lipari Landfill Site.
	68-02-3245	Aerial remote sensing over the Lipari Landfill Site.
Mack Lab.	68-01-7065	Performed sampling analysis.
NANCO	68-01-7102 *	Performed sampling analysis.
	68-01-7314 *	Performed sampling analysis.
New England	68-92-0016	Installed fence around landfill area and additional fence outside the Chestnut Branch area.

CONTRACTORS NAME	CONTRACT NO.	DESCRIPTION OF ACTIVITY
NUS	68-01-6168 *	Performed sampling analysis.
	68-01-6699 *	Assisted EPA in performing field investigations of air, leachate, and waterbodies. Performed review of disease control documents and compiled Health Assessment.
	68-01-7022 *	Performed sampling analysis.
	68-01-7346 *	Assisted EPA in performing field investigations including air monitoring.
Pacific Analytical	68-01-7276 *	Performed sampling analysis.
PBS & J	68-01-7323 *	Performed sampling analysis.
Radian Corp.	68-02-3171	Performed work related to technical/economic analysis and treatability studies related to ROD I.
	68-01-6853 *	Performed sampling analysis.
Rocky Mountain Analytical	68-01-6430	Performed sampling analysis.
	68-01-6879 *	Performed sampling analysis.
	68-01-7059 *	Performed sampling analysis.
	68-01-7068	Performed sampling analysis.
Roy Weston	68-01-6669	Provided technical support during installation of the fence outside of the Chestnut Marsh Area.

CONTRACTORS NAME	CONTRACT NO.	DESCRIPTION OF ACTIVITY
Roy Weston - cont'd	68-01-6781 *	Performed sampling analysis.
	68-01-7367 *	Provided technical support during ROD II and ROD III including air analyses and water body and sediment sampling.
	68-01-7443 *	Provided technical support during the investigation and design phase of ROD III.
	68-03-3482 *	Assisted EPA in performing leachate and water body sampling and in conducting air analyses at or near the Lipari Site.
S-Cubed	68-01-7261	Performed sampling analysis.
South West Oklahoma	68-01-7168	Performed sampling analysis.
Techlaw	68-W0-0001 *	Assisted EPA in the administration of Site files in support of litigation.
	68-01-6838 *	Assisted EPA in the administration of Site files in support of litigation.
	68-01-7104 *	Assisted EPA in the administration of Site files in support of litigation.
	68-01-7369 *	Assisted EPA in the administration of Site files in support of litigation.
University of IOWA	68-01-7101	Performed sampling analysis.
University of Washington	68-01-6521	Performed sampling analysis.
U.S. Testing	68-01-6963 *	Performed sampling analysis.
	68-01-7058	Performed sampling analysis.

CONTRACTOR NAME	CONTRACT NO.	DESCRIPTION OF ACTIVITY
U.S. Testing- cont'd	68-01-7081 *	Performed sampling analysis.
Versar, Inc.	68-01-6090	Performed sampling analysis.
	68-01-6757 *	Performed sampling analysis.
	68-01-6776 *	Performed sampling analysis.
	68-01-6882 *	Performed sampling analysis.
	68-01-7072	Performed sampling analysis.
	68-01-7082 *	Performed sampling analysis.
Viar	68-D9-0135 *	Provided management, operations, and administrative support to the Contract Laboratory Program.
	68-01-2904 *	Provides management, operations, and administrative support to the Contract Laboratory Program.
	68-01-6702 *	Provided management, operations, and administrative support to the Contract Laboratory Program.
	68-01-6808 *	Provided management, operations, and administrative support to the Contract Laboratory Program.
	68-01-7253 *	Provided management, operations, and administrative support to the contract Laboratory Program.
West Coast Tech.	68-01-6077	Performed sampling analysis.
Woodward & Clyde	68-03-2964	Provided a geophysical evaluation of subsurface site conditions. Assisted EPA in assisting the municipality to assess the remedies suggested for the Site.
	6W0513NNLX	Reviewed costs of contract with EPA in relation to the Site
York	68-01-7157 *	Performed sampling analysis.

2. Inter-Agency Agreements

AGENCY	CONTRACT NO.	DESCRIPTION OF ACTIVITY
Army Corps Of Engineers	AD96F2AA226	Provided technical assistance during the ROD I study and remedy selection process for the Site.
	AD96F2A247	Provided technical assistance during the design of the ROD I remedy and development of construction contract documents.
	AD96F2A311 DW9318801 DW96018801	Provided technical assistance during the procurement of the construction contractor and construction of the ROD I remedial action at the Lipari Site.
	DW96116401	Provided technical assistance during the ROD II study and remedy selection phase.
	DW96125001	Provided technical assistance during the identification of Architectural/Engineering (A/E) firms for the engineering design phase of ROD II.
	DW96233901	Provided technical assistance in preparation of the bidding and contract documents for the ROD II remedial action.
	DW96237101	Provided technical assistance to EPA in discussions with and oversight of construction contractor for ROD II.
	DW96340301	Provided technical assistance to EPA during implementation of the ROD II remedial action, including execution of a service agreement with GCUA.
	DW96369901*	Provided technical assistance during the identification of A/E firm for the engineering design phase of ROD III.
U.S.Coast Guard	DW96340201*	Provided technical assistance to the EPA in procurement and administration of the ROD III remedial design.
	AD69F15900	Reimbursement Agreement for Funds Expended by 311(k) Pollution Fund on Behalf of CERCLA §104 for early work done at the Site.
Department of Interior	DW14196801	Prepared Survey of Natural Resource damage.

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APPENDIX B

ROHM AND HAAS PAYMENT SCHEDULE

ROHM AND HAAS PAYMENT SCHEDULE

Payment Number	1	2	3	4	5	6	7	8
Time of Payment	In accordance with Escrow Order dated August 21, 1992	2nd Anniversary plus 30 days following the Effective Date of Consent Decree	3rd Anniversary plus 30 days following the Effective Date of Consent Decree	4th Anniversary plus 30 days following the Effective Date of Consent Decree	5th Anniversary plus 30 days following the Effective Date of Consent Decree	6th Anniversary plus 30 days following the Effective Date of Consent Decree	7th Anniversary plus 30 days following the Effective Date of Consent Decree	8th Anniversary plus 30 days following the Effective Date of Consent Decree
Amount of Principal Payment	\$6,000,000	\$4,000,000	\$4,000,000	\$4,000,000	\$5,000,000	\$5,000,000	\$5,000,000	\$9,700,000
Interest ¹								
Additional Interest				\$143,500			\$73,500	

¹ Interest shall be added to Payments 2 through 8, calculated at the variable prevailing Superfund Interest Rate, on the unpaid principal balance remaining after the preceding principal payment.